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Attorney for Plaintiff
DON BORG

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

DON BORG,)	No. C 07-03149-JW
)	
Plaintiff,)	EX PARTE APPLICATION TO CONTINUE
)	HEARING ON DEFENDANTS' MOTION
vs.)	TO DISMISS/MOTION FOR SUMMARY
)	JUDGMENT, AND CASE MANAGEMENT
PRINCIPAL LIFE INSURANCE CO.,)	CONFERENCE AND EXTEND TIME FOR
TARGET CORPORATION and DOES 1)	PLAINTIFF TO FILE OPPOSITION TO
through 20, inclusive,)	MOTION; DECLARATION OF STANLEY
)	G HILTON
Defendants.)	
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Pursuant to local rules, plaintiff Borg hereby moves ex parte and asks the court to CONTINUE the HEARING ON DEFENDANTS' MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT, AND CASE MANAGEMENT CONFERENCE FROM JUNE 9 2008 TO JUNE 30 2008 OR LATER (OCTOBER 6 2008 IS SUGGESTED), AND TO EXTEND THE TIME FOR PLAINTIFF TO FILE HIS OPPOSITION TO DEFENDANTS' MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT. THIS IS SUPPORTED BY THE DECLARATION OF STANLEY G HILTON

THE REASONS FOR THIS REQUEST ARE THREEFOLD: (1) PLAINTIFF'S

1 COUNSEL HAS A CONFLICT IN SCHEDULE ON JUNE 9 2008 AND NEEDS TO BE IN
2 ANOTHER COURT FOR ANOTHER TRIAL SET FOR THAT DATE, AND (2) DUE TO AN
3 OVERSIGHT IN CALENDAR AND ACCIDENTAL ERASURE OF DUE DATE FOR
4 OPPOSITION, AND ILLNESS, PLAINTIFF'S COUNSEL HAS NOT BEEN ABLE TO FILE
5 AN OPPOSITION TO THE MOTION AND REQUESTS UNTIL AT LEAST JUNE 9 2008 TO
6 BE ABLE TO FILE HIS OPPOSITION; (3) THE DEFENDANTS HAVE ANNOUNCED
7 THAT THEY INTEND TO FILE A MOTION FOR RULE 11 SANCTIONS AGAINST
8 PLAINTIFF AND SET IT FOR HEARING OCT 6 2008 AND WE SUGGEST THE SAME
9 DATE BE SET FOR ALL THREE MATTERS AS THEY ARE RELATED. . HE
10 DISCOVERED THIS OVERSIGHT ONLY ON MAY 29 2008 AND PROMPTLY CALLED
11 DEFENSE COUNSEL EVA SCHUELLER AND ASKED HER TO STIPULATE TO
12 CONTINUE THE HEARING; SHE REFUSED.

13 IT IS UNFAIR FOR PLAINTIFF TO NOT BE ALLOWED TO FILE AN OPPOSITION
14 TO THE MOTION TO DISMISS/MSJ. NO PREJUDICE EXISTS AS TO DEFENDANT IF
15 THE HEARING IS CONTINUED A FEW WEEKS. IN ANY EVENT DEFENSE COUNSEL
16 SAID SHE IS FILING A MOTION FOR SANCTIONS AND SETTING IT FOR OCTOBER 6
17 2008 SOP WE SUGGEST THE COURT CONTINUE ALL THREE MATTERS TO OCTOBER
18 6, OR AT LEST TO JUNE 30, CLEARLY THE MOTION FOR SANCTIONS ADDRESSES
19 THE VALIDITY OF THE COMPLAINT AND AMENDED COMPLAINT SO THE MOTIONS
20 SHOULD BE HEARD AT THE SAME TIME.

21 **DECLARATION OF STANLEY G HILTON**

22 I DECLARE:

- 23 1. I AM ATTORNEY OF RECORD FOR PLAINTIFF BORG IN THIS CASE.
- 24 2. DUE TO CALENDAR ERROR AND ACCIDENTAL ERASURE OF THE
- 25 DUE DATE FOR THE PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO
- 26 DISMISS/MOTION FOR SUMMARY JUDGMENT, I DID NOT REALIZE UNTIL
- 27 YESTERDAY (MAY 29N 2008) THAT AN OPPOSITION HAD BEEN DUE TO SAID
- 28 MOTIONS ON OR ABOUT MAY 19 2008 BECAUSE THE HEARING IS SET FOR JUNE 9.

1 I DISCOVERED THIS ON MAY 29 AND PROMPTLY ASKED DEFENSE COUNSEL EVA
2 SCHEUELLER IF SHE WOULD STIPULATE TO CONTINUE TH HEARING FROM JUNE 9
3 TO A LATER DATE; SHE REFUSED.

4 3. SCHUELLER ALSO INDICATED THAT DEFENDANTS PLAN TO FILE A
5 MOTION FOR RULE 11 SANCTIONS AGAINST PLAINTIFF AND ME IMMINENTLY
6 AND SET IT FOR HEARING ON OCTOBER 6 2008. BECAUSE MANY OF THE ISSUES
7 IN BOTH THE RULE 11 MOTION AND THE MOTION TO DISMISS ARE RELATED,
8 DEALING WITH THE VALIDITY OF PLAINTIFF'S CASE, I SUGGEST THE COURT
9 CONTINUE ALL THREE MATTERS TO THE SAME DATE, OCT 6 2008. IN THE
10 ALTERNATIVE I SUGGEST JUNE 30 AS A HEARING DATE FOR THE MOTION TO
11 DISMISS/SUMMARY JUDGMENT,

12 4. I RECENTLY SUFFERED A FRACTURED ANKLE AND AM IN GREAT PAIN.
13 THIS WAS DIAGNOSED BY MY PODIATRIST AND THE PAIN INTERFERES WITH MY
14 ABILITY TO WORK. I REQUEST AN EXTENSION OF TIME TO JUNE 9 OR LATER TO
15 FILE PLAINTIFF'S OPPOSITION TO THE MOTION TO DISMISS/SUMMARY
16 JUDGMENT. I NEED THIS TIME, TO PREPARE THE OPPOSITION.

17 5. IN ADDITION, I AM COUNSEL OF RECORD FOR ANOTHER CLIENT IN NA
18 CRIMINAL CASE MATTER WHICH IS CURRENTLY SET FOR TRIAL ON JUNE 9 2008
19 AT 9 AM IN SAN MATEO COUNTY SUPERIOR COURT IN SOUTH SAN FRANCISCO CA
20 , PEOPLE V. FOGARTY. ALTHOUGH THAT CLIENT INDICATED SHE WANTS TO
21 CHANGE LAWYERS RECENTLY, AS FAR AS I KNOW I AM STILL HER COUNSEL OF
22 RECORD AND I HAVE TO APPEAR AT 9 AM ON JUNE 9 IN THAT COURT IN SOUTH
23 SAN FRANCISCO, CA, SINCE I HAVE NOT BEEN OFFICIALLY RELIEVED,. THUS I
24 HAVE A SCHEDULE CONFLICT WITH THIS CASE FOR THAT DAY AND TIME.

25 6. I BELIEVE PLAINTIFF HAS VALID GROUNDS TO OPPOSE DEFENDANTS'
26 MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT AND I BELIEVE I CAN
27 STATER THOSE GROUNDS IF GIVEN A CHANCE TO DO9 SO; HENCE THE REQUEST
28 FOR EXTENSION OF TIME TO FILE OPPOSITIONS TO THE MOTION.

1 I DECLARE UNDER PENALTY OF PERJURY OF THE US THAT THE ABOVE IS
2 TRUE AND CORRECT. EXECUTED ON MAY 30 2008 IN HILLSBOROUGH, CA.

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4 DATED: MAY 30, 2008

5 RESPECTFULLY SUBMITTED,

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7 _____/S/

8 STANLEY G. HILTON

9 ATTORNEY FOR PLAINTIFF
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